



THE ATTORNEY GENERAL OF TEXAS

AUSTIN, TEXAS 78711

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October 8, 1975

The Honorable Bob Bullock
Comptroller of Public Accounts
State Finance Building
Austin, Texas

Opinion No. H-710

Re: Propriety of allocation of
stock and bond sales fees of a
broker between Texas and other
states for franchise tax purposes.

Dear Mr. Bullock:

You have requested our opinion concerning the franchise tax allocation of receipts of an incorporated stock broker received from Texas clients. You have asked what percentage of these receipts should be allocated as "business done in Texas" under the provisions of article 12.02, Taxation-General.

You have advised us that the taxpayer, a Delaware corporation, classifies only 60% of its commissions on New York Stock Exchange transactions for the account of Texas clients and 50% of its receipts from the sale or purchase of bonds for such clients as "receipts from its business done in Texas." Although all commissions were paid and received at its Texas office, the taxpayer utilizes these percentages because the State of New York reportedly considers the remaining percentages to be allocable to New York for franchise tax purposes.

Article 12.02 (1)(b) provides that the term "gross receipts from . . . business done in Texas" includes:

(ii) Services performed within Texas; . . .

. . .

(iv) All other business receipts within Texas

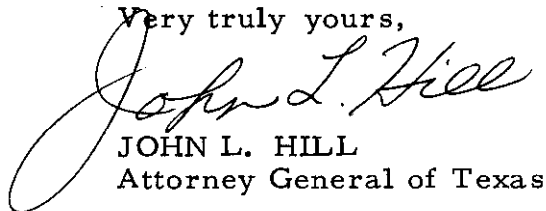
In certain cases intangibles may be included within the definition of other business receipts, and as such would be allocated on the basis of the "location of payor" Humble Oil & Refining Co. v. Calvert, 414 S. W. 2d 172 (Tex. Sup. 1967).

In our view, brokers' commissions as a general matter constitute receipts for services, although in a particular fact situation some receipts may arise from intangibles. See Guay v. Schneider, Bernet & Hickman, Inc., 341 S.W. 2d 461 (Tex. Civ. App. -- Waco 1960, writ ref'd. n. r. e., 344 S.W. 2d 429); Browne v. King, 196 S.W. 884 (Tex. Civ. App. -- San Antonio 1917, aff'd, 235 S.W. 522); 73 C.J.S. Property § 9. Thus, ordinarily the allocation of receipts from commissions should be on the basis of the percentage of services performed in Texas in particular transactions. Cf. Attorney General Opinion H-281 (1974). The selection of a proper percentage would necessarily involve factual determinations; hence we are unable to say as a matter of law whether the taxpayer's claimed percentages are correct. Article 12.12, Taxation-General, provides ample investigatory authority to the Comptroller to facilitate such determinations. The Comptroller is certainly not bound by New York's determination.


SUMMARY


As a general matter, commissions of a stock broker should be allocated on the basis of the percentage of services performed in Texas. The Comptroller is authorized to investigate and determine the proper percentage.

Very truly yours,


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Attorney General of Texas

APPROVED:


DAVID M. KENDALL, First Assistant


C. ROBERT HEATH, Chairman
Opinion Committee

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